

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

CEDRIC CLEON FRATER,
Petitioner.

No. 2 CA-CR 2015-0123-PR
Filed May 26, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Maricopa County

No. CR2011123789028DT

The Honorable Joseph C. Welty, Judge

REVIEW GRANTED; RELIEF DENIED

Cedric Frater, Florence
In Propria Persona

STATE v. FRATER
Decision of the Court

MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Chief Judge Eckerstrom and Presiding Judge Miller concurred.

ESPINOSA, Judge:

¶1 Cedric Frater seeks review of the trial court's order summarily denying his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court clearly abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Frater has not met his burden of demonstrating such abuse here.

¶2 Frater pled guilty in 2012 to three counts of sale or transportation of marijuana and was sentenced to consecutive prison terms totaling fourteen years. He filed an untimely notice of post-conviction relief in March 2013 stating he wished to assert claims of actual innocence, newly discovered evidence, and a significant change in the law. *See* Ariz. R. Crim. P. 32.1(e), (g), (h). The trial court summarily dismissed the notice, and Frater did not seek review of that ruling, instead filing a second notice and a petition for post-conviction relief in May 2013. The court summarily denied relief and, again, Frater did not seek review of that ruling. In September 2013, Frater filed yet another notice of post-conviction relief citing Rule 32.1(e), (g), and (h) but arguing only that defense counsel had been ineffective by failing to seek suppression of evidence. The court summarily dismissed the proceeding, and this petition for review followed.

¶3 On review, Frater lists numerous claims of ineffective assistance of counsel and asserts that his indictment was duplicitous and his consecutive sentences were improper. He also asserts he is entitled to raise those claims because *Martinez v. Ryan*, ___ U.S. ___, 132 S. Ct. 1309 (2012), constitutes a significant change in the law pursuant to Rule 32.1(g).

STATE v. FRATER
Decision of the Court

¶4 Frater’s most-recent notice of post-conviction relief was patently untimely. Ariz. R. Crim. P. 32.4(a). As he appears to recognize, he may only raise claims pursuant to Rule 32.1(d) through (h). Ariz. R. Crim. P. 32.4(a). Thus, Frater is entitled to raise a claim pursuant to Rule 32.1(g) that there has been a significant change in the law. But the Supreme Court’s holding in *Martinez* does not constitute a change in Arizona law. See *State v. Escareno-Meraz*, 232 Ariz. 586, ¶ 6, 307 P.3d 1013, 1014 (App. 2013). And it would not aid Frater in any event. The Supreme Court determined in *Martinez* that, as a matter of equity, a non-pleading defendant may be able to obtain federal habeas review of a claim that is procedurally barred if he can show ineffective assistance of his first post-conviction counsel. ___ U.S. at ___, 132 S. Ct. at 1319-20. As a pleading defendant, Frater was entitled to counsel in his first post-conviction proceeding—a right he expressly declined to exercise.¹ Ariz. R. Crim. P. 32.4(c)(2). The trial court did not err in summarily dismissing Frater’s most-recent notice of post-conviction relief.

¶5 Although we grant review, relief is denied.

¹ Frater also declined to request counsel in each of his subsequent notices.